IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 22.09.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.29432 of 2002

K.S.Gurunathan .. Petitioner

Vs.

1.The Director General,
Central Industrial Security Force,
Lodhi Road, New Delhi.

2.The Director General,
Central Industrial Security Force,
South Zone, Besant Nagar,
Chennai.

3.The Deputy Inspector General,
Central Industrial Security Force,
Duliajan, Dibrugrah, Assam.

4.The Commandant,
Central Industrial Security Force,
Dliajan, Dibrugrah, Assam. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus calling for the records relating to the order passed by the 3rd Respondent in his order No. V 11013/Appeal/PA/2K - 8120 dated 09.12.2000 confirming the order of the 4th Respondent dated 15.05.2000 in his final order No. V 15014/MAJ/02 OIL (D) DISC/2000/3054 and quash the same and direct the respondents to reinstate the petitioner in the CISF with all monitory benefits.

For Petitioner : Mr.M.Md.Ibrahim Ali
For Respondents : Mr.A.S.Vijayaraghavan, ACGSC.,

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ORDER

(Order of the Court was delivered by P.SATHASIVAM, J.)

` Aggrieved by the orders of respondents 3 and 4 dated 09.12.2000 and 15.05.2000, the petitioner has filed the above writ petition to quash those orders and direct the respondents to reinstate him in the Central Industrial Security Force(hereinafter referred to as "the CISF") with all monetary benefits.

2. According to the petitioner, he joined the Central Industrial Security Force as Constable on 30.07.1991. The second respondent had sent him for training for nine months. The fourth respondent transferred the petitioner to Assam in the month of August, 1999 and he joined duty at Assam and applied for 15 days Earned Leave with effect from 30.08.1999 to 13.09.1999 including the inward journey of two days on 14.09.1999 and 15.09.1999 and the same was granted. He was supposed to join duty on 16.09.1999. Therefore, he proceeded to his native place. On 09.09.1999, an application had been sent by him by speed post with acknowledgement due requesting to sanction further 15 days of paternity leave with effect from 16.09.1999. The fourth respondent by telegram dated 29.09.1999 directed him to report for duty on 01.10.1999. In the mean time, he was under treatment for Jaundice. Due to the said reason, he did not report duty on 01.10.1999 and the fourth respondent issued a Memorandum under Rule 34 of CISF Rules for the alleged unauthorised absence. On 05.02.2000, the petitioner sent a reply to the Memorandum and denied the charges as false and incorrect. But the fourth respondent, without accepting the reply, has ordered the departmental enquiry by appointing an enquiry officer. The Enquiry Officer has sent notices for enquiry and the adjournment sought for by the petitioner, by telegram, on the ground of sickness, was not granted. The Officer has conducted the enquiry exparte and submitted his report to the fourth respondent. Thereafter, the fourth respondent has communicated the enquiry report and invited the representation on the enquiry report. Accordingly, a detailed representation was sent along with the medical certificate obtained from the local doctor. But the fourth respondent, without considering the medical certificate, has passed a final order awarding punishment of dismissal from service under Rule 31(a) of the CISF Rules on 15.05.2000. Aggrieved by the said order, the petitioner preferred an appeal to the third respondent, which was also confirmed. Aggrieved by the order passed by respondents 3 and 4, the petitioner has filed the present writ petition.

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3. Counter affidavit has been filed on behalf of the respondents. Apart from disputing various factual aspects, the respondents have raised an objection regarding maintainability of the present writ petition before this Court since the entire cause of action arose at CISF Unit Oil Duliajan, District Dibrugarh (Assam). It is further stated that the jurisdictional Court is High Court of Guwahati and this Court lacks the jurisdiction to try the matter regarding merits of the order passed by the original and appellate authorities. The deponent of the counter affidavit has once again reiterated the reasonings stated therein and prayed for dismissal of the writ petition.

4. We have carefully considered the materials placed and the rival contentions.

5. It is useful to refer to the charge levelled against the petitioner, which reads as under:

> "Gross indiscipline and dereliction of duty in that No.912293679 Constable K.S.Gurunathan, 'HQ" Sector of CISF Unit Oil Dliajan, who was granted 15 days EL from 30.08.1999 to 13.09.1999 and subsequently extended 15 days paternity leave from 14.09.1999 to 28.09.1999 on his request with eligible permission, failed to report for duty on due date i.e. 1.10.1999 (FN) and overstaying the granted leave unauthorisedly."

6. It is seen from the order of the original authority that the above mentioned charge memorandum along with copies of listed documents were sent to the petitioner's home address under registered/AD post, which was received by him on 21.02.2000. Besides, a copy of the same was also served on him, through No.854150924 of CISF Unit TPT, Tuticorin on 19.02.2000 under acknowledgment. By the said communications, the petitioner was directed to submit a written statement of defence within 10 days and he was also asked whether he desires to be heard in person. The petitioner sent a letter and the same was received by the disciplinary authority on 15.02.2000, which shows that he was suffering from back pain and he was not in a position to walk properly. However, the fact remains that he did not forward the medical certificate in support of his version requesting to extend six months leave. In the absence of acceptable material/document, the disciplinary authority refused to accept his claim and thereafter the enquiry officer was appointed to conduct departmental enquiry as per the procedure under Rule (4) of Rules 34 of CISF Rules, 1969. Though

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proper notice was sent to him for participating in the enquiry, the petitioner did not avail the same. Though he claimed that he was under treatment, in the absence of acceptable material, the enquiry officer refused to accept and extend time. Ultimately an ex-parte enquiry report was submitted to the disciplinary authority. It is not in dispute that the copy of the enquiry report was sent to the petitioner. Even though the petitioner did not participate in the enquiry, the department examined the witnesses in support of the charge levelled against him. The original authority, after going into the conclusion arrived in the enquiry and of the fact that the petitioner has not substantiated his claim that he was sick during the relevant period by placing medical certificate or prescription etc, accepted the conclusion arrived in the enquiry and awarded punishment of dismissal from service.

7. The petitioner, aggrieved by the order of dismissal, filed an appeal before the appellate authority/third respondent. A perusal of the order of the appellate authority shows that the defence taken by the petitioner was duly considered by the appellate authority and ultimately concluded that due to his non co-operation, an ex-parte enquiry was conducted. He also referred to the order passed by the original authority. It is also relevant to note that even though two call-up letters were sent to the address given by the petitioner, he never responded. The appellate authority, after finding that there is no procedural lapse or flaw and taking note of the conduct of the petitioner and after finding that there is no convincing reason for interference, confirmed the order of the disciplinary authority and dismissed the appeal.

8. Learned counsel for the petitioner has submitted that due to his illness, the petitioner was not in a position to attend his office within the period of leave granted by the authority. He also contended that though the petitioner sent a telegram seeking extension of time and also the reason for not attending the enquiry, the same was not properly considered by the original as well as the appellate authority. He further contended that in any event, the punishment imposed is excessive and disproportionate to the charges levelled against him. In support of the above contention, the learned counsel has relied on a Division Bench decision of this Court in W.A.No.1458 of 1999 dated 17.08.1999.

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9. On going through the relevant materials, particularly, the charge memo, conduct of the petitioner, enquiry report of the original authority and the order of the appellate authority, we are unable to accept both the contentions.

10. It is not in dispute that initially the petitioner was granted 15 days leave from 30.08.1999 to 13.09.1999 and it is also not in dispute that subsequently the leave was extended for a further period of 15 days i.e. upto 28.09.1999. Thereafter the petitioner has failed to report for duty i.e. on the due date 01.10.1999 and overstayed the granted leave unauthorisedly. The point is whether the explanation offered could be accepted or not. Though the petitioner had sent telegrams seeking further extension of leave on the ground of sickness, admittedly, there is no acceptable material in support of his claim viz., illness. Likewise even for the enquiry, it is not in dispute that the petitioner was informed in respect of proposed enquiry. However, for the same reasons viz., illness, he did not attend the enquiry. Though it was an ex-parte enquiry, the dismissal of the enquiry report reveals that the department examined three witnesses and their statements were recorded. In the absence of any evidence on the side of the petitioner and based on the materials placed by the department, the enquiry officer submitted a report, holding that the charges levelled against him were proved.

11. We have already referred to the order of the disciplinary authority, which shows that after considering the serious charges levelled against the petitioner and in the absence of any acceptable material, such as medical certificate from the local Doctor, prescription or receipt for purchase of medicine, the stand taken by the petitioner was rightly rejected by the disciplinary authority. Taking note of the fact that overstaying, that too, after grant of leave and extension at the instances of the petitioner, is a serious matter and finding that absenting unauthorisedly by a responsible member of the CISF is a very serious offence on the part of the charged official, which deserves stringent punishment, the original authority ultimately passed an order of dismissal from service. The appellate authority has also considered all the details and after satisfying himself as well as in the absence of proper explanation and material on the part of the delinquent officer, confirmed the order of dismissal. Though the learned counsel for the petitioner relied on the decision of the Division Bench of this Court made in W.A.No.1458 of 1999 dated 17.08.1999, it is seen from the said decision that the Division Bench after considering the facts and peculiar circumstances of the case, altered the

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punishments. It depends upon the facts and circumstances of each case.

12. We have already referred to all the relevant aspects and it is not the case of the petitioner that he was not afforded adequate opportunity to put forth his defence. For the sake of repetition, it is not in dispute that no acceptable material was placed before the authority in support of his claim for overstay. In such circumstances, when all the relevant aspects have been considered by the original and appellate authority, we are of the view that in the absence of any contra material, interference by this Court exercising jurisdiction under Article 226 of the Constitution of India is very limited. We are satisfied that there is no valid ground for interference, even with regard to the quantum of punishment.

13. In the light of what is stated above, the writ petition fails and the same is dismissed. No costs.

raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

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Dliajan, Dibrugrah, Assam.

+ one cc to Mr. M. Md. Ibrahim Ali Advocate sr no. 45380
+ one cc to Mr. A.S. Vijayaraghavan, Advocate sr no. 44976

BV(CO)
NM(05.10.2006)

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